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No. 91-

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

Mark Joseph Sholtis,

Petitioner

v.

State of New Jersey,

Respondent

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state statute that mandates the forfeiture of a firearm after criminal charges are dismissed, without providing the owner of the firearm adequate notice or an opportunity for an evidentiary hearing, violates the Due Process Clause of the Fourteenth Amendment?

PARTIES

The real parties in interest in this case are Mark Joseph Sholtis, the owner of the two firearms seized by the State of New Jersey, and the State of New Jersey.

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IN THE MATTER OF TWO SEIZED FIREARMS

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the New Jersey Supreme Court (App. A) is reported officially at 127 N.J. 84 (1992) and unofficially at 602 A.2d 728 (N.J. 1992).

JURISDICTION

The judgment of the New Jersey Supreme Court was entered on March 4, 1992. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment, U.S. Constitution

". . . nor shall any State deprive any person of . . . property, without due process of law . . . ."

STATUTES INVOLVED

N.J.S. 2C:64-1. Property subject to forfeiture

a. Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

(1) . . . firearms which are unlawfully possessed, carried, acquired or used, ... These shall be designated prima facie contraband.

N.J.S. 2C:64-2. Forfeiture procedures; prima facie contraband

Except as provided in N.J.S. 2C:35-21, prima facie contraband shall be retained by the State until entry of judgment or dismissal of the criminal proceeding, if any, arising out of the seizure. Thereafter, prima facie contraband shall be forfeited to the entity funding the prosecuting agency involved . . . .

STATEMENT OF THE CASE

This case concerns two firearms seized from Mark Joseph Sholtis on August 9, 1988. On that date, Mr. Sholtis, a resident of Florida, was stopped for speeding while driving a 1977 Dodge Van with Florida registration on the New Jersey Turnpike in Teaneck, New Jersey by New Jersey state troopers. App. at 2a. When one of the troopers approached the vehicle, he observed two occupants in the front seat: the driver, Mr. Sholtis, and a passenger, Bonnie Gerla. While speaking with these individuals, according to the State, the trooper allegedly spotted an 18 inch machete lying in open view between the driver's and passenger's seats. App. at 2a. According to Mr. Sholtis, however, and as noted by the trial court in a hearing on September 13, 1988 (App. at 9a), after the trooper was given Mr. Sholtis' driver's license and vehicle registration, the trooper, without reading Mr. Sholtis' his rights, asked if there were any firearms in the vehicle.[1] Mr. Sholtis answered in the affirmative. As a

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[1] In its opinion, the New Jersey Supreme Court stated that the parties "have agreed on the facts." 127 N.J. at 86, 602 A.2d at 729. App. at 2a. In fact, although the parties agreed on the procedural history of the case, their briefs made it evident that, regarding the above recited critical facts related to the search of the van, there was a significant dispute.

result of the trooper's observation, or as a result of Mr. Sholtis' statement, the trooper directed both occupants from the van, read them their rights, patted them down for weapons with negative results, and placed them under arrest for possession of a dangerous weapon (the machete). App. at 2a.

The trooper then searched the interior of the van without a warrant. Inside the glove compartment, he found a loaded .38 caliber Smith and Wesson handgun. App. at 2a. Underneath and behind the driver's seat he discovered a loaded .357 caliber Smith and Wesson handgun, as well as a "speed loader" containing five .38 caliber hollow point cartridges, five .38 caliber blue-tipped cartridges, and a clear plastic baggie containing a small amount of marijuana. App. at 2a.

Mr. Sholtis and Ms. Gerla, both of whom were Florida residents, were transported to the Totowa, New Jersey State Police Barracks where Mr. Sholtis gave a written statement admitting to ownership of both the firearms and the cartridges found in the van. Ms. Gerla gave a written statement acknowledging ownership of the marijuana. App. at 2a. Mr. Sholtis was subsequently charged with possession of a .357 magnum caliber Smith and Wesson model 686 revolver without a permit, contrary to N.J.S. 2C:39-5b; possession of a .38 caliber Smith and Wesson model 60 five shot revolver without a permit, contrary to the same statute; possession of five .38 caliber hollow point cartridges contained within a speed loader, contrary to N.J.S. 2C:39-3f; and with possession of an 18 inch long machete, contrary to N.J.S. 2C:39-3a. App. at 2a.

Before any proceedings were initiated, the Bergen County Prosecutor's Office consented to Mr. Sholtis' admission into the Pretrial Intervention Program (PTI)[2] since

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[2] N.J.S. 2C:43-12e provides, in pertinent part, that "[a]t any time prior to trial but after the filing of a criminal complaint . . . with the consent of the prosecutor and upon written recommenda-

Mr. Sholtis had no prior criminal record, conditioned upon his signing a weapons release form. App. at 2a. At the PTI hearing on September 13, 1988, Mr. Sholtis argued, however, that this condition would not be fair because his home state of Florida allowed him to carry a loaded firearm. As a result of Mr. Sholtis' concern, the trial court admitted Mr. Sholtis into the PTI program without the weapons release condition requested by the prosecutor's office, reserving decision on the return of the two seized firearms because of the trial court's concern that "there is comity problems here . . . ." App. at 10a. The trial court agreed with the prosecutor, however, that N.J.S. 2C:64-2 mandated forfeiture of the firearms without any additional proceedings. App. at 10a.

On March 21, 1989, defendant successfully completed PTI and all charges were dismissed, pursuant to N.J.S. 2C:43-13d. App. at 3a.

On April 27, 1990, the trial court rendered an oral opinion on the question on which he had earlier reserved judgment and ordered the State to return the two firearms to Mr. Sholtis through a Florida law enforcement agency.[3] App. at 3a. On July 10, 1990, the trial court formalized this ruling in a written order directing that the two firearms be returned to Mr. Sholtis through the auspices of the Sheriff of Lee County, Florida. The State appealed from this order to the Appellate Division. App. at 3a. On February 11, 1991, the Appellate Division affirmed, stating only that it affirmed substantially for the reasons set forth by the trial court. App. at 3a. Upon the State's application, the Appellate Division en-

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tion of the program director, the assignment judge or a judge designated by him may postpone all further proceedings against an applicant and refer said applicant to a program of supervisory treatment approved by the Supreme Court." See also, N.J.S. 2C:43-12a and New Jersey Supreme Court Rule 3:28.

[3] Mr. Sholtis did not seek return of the machete, the speed loader, or the cartridges.

tered a stay of the order directing the return of the two firearms, in order to permit the State to seek further review.

On May 16, 1991, the New Jersey Supreme Court granted the State's petition for certification under the caption "State v. Mark Joseph Sholtis." 126 N.J. 329, 598 A.2d 888 (N.J. 1991). On the State's subsequent motion, the caption was changed to "In the Matter of Two Seized Firearms" to reflect more accurately the nature of the proceedings.

On March 4, 1992, the New Jersey Supreme Court reversed the Appellate Division's affirmance. In the course of reversing the Appellate Division, the New Jersey Supreme Court expressly passed upon the question of whether Mr. Sholtis' right to procedural due process was violated when it held that "the proceedings in this case furnished sufficient procedural due process to the property owner . . . ." 127 N.J. at 90, 602 A.2d at 731. App. at 6a.[4] The New Jersey Supreme Court ruled on the question as the issue had been addressed by the State in its opening brief and by Mr. Sholtis in his answering brief.

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[4] The issue had been raised in the trial court in a letter memorandum from Mr. Sholtis' counsel to the trial court following the September 13, 1988 hearing on Mr. Sholtis' admission to the PTI program. App. at 10a. Since it was unnecessary to do so in light of their resolution of the case, the issue was not ruled on by the trial court or the Appellate Division.

REASON FOR GRANTING THE PETITION

THE DECISION OF THE SUPREME COURT OF NEW JERSEY IS IN DIRECT CONFLICT WITH A DECISION OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AND NUMEROUS DECISIONS OF THIS COURT ON THE RIGHT TO PROCEDURAL DUE PROCESS OF LAW, IN THAT THE DECISION OF THE NEW JERSEY SUPREME COURT ORDERED FORFEITURE OF PROPERTY WITHOUT AFFORDING THE PROPERTY OWNER ADEQUATE NOTICE OR AN OPPORTUNITY FOR AN EVIDENTIARY HEARING

1) The only aspect of the decision of the New Jersey Supreme Court for which review is being sought in this Court is that court's holding that N.J.S. 2C:64-2, on its face and as applied to Mr. Sholtis, does not violate Mr. Sholtis' Fourteenth Amendment right to procedural due process.[5] According to the New Jersey Supreme Court, N.J.S. 2C:64-2 mandates that so-called "prima facie" contraband, including firearms under certain circumstances, be forfeited to the state upon "dismissal of the criminal proceeding" without application of the "civil procedures applicable to derivative contraband . . . ." 127 N.J. at 90, 602 A.2d at 730-1. App. at 6a. Pursuant to that plain statutory language, the New Jersey Supreme Court remanded this case to the trial court "for forfeiture of the contraband weapons . . . ." 127 N.J. at 90, 602 A.2d at 731. App. at 7a. No other proceedings were ordered or allowable under the New Jersey Supreme Court's decision.

2) In the context of the forfeiture of allegedly unlawfully possessed firearms, the District of Columbia Court of Appeals has unanimously ruled that a person who claims an interest in such property is

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[5] The New Jersey Supreme Court held that "the proceedings in this case furnished sufficient procedural due process" to Mr. Sholtis. 127 N.J. at 90, 602 A.2d at 731. App. at 6a.

> entitled to notice that certain property has been seized, that the District sought to retain the property pursuant to specified authority, and that a claimant could take particular steps to challenge the District's action. *Ford* v. *Turner*, 531 A.2d 233, 238 (D.C. App. 1987).

As a result, the District of Columbia Court of Appeals held in *Ford* that the plaintiff stated a cause of action for damages under 42 U.S.C. 1983 since the Metropolitan Police Department had effectively forfeited the plaintiff's property without constitutionally adequate notice; therefore, the cause was remanded to the trial court for a hearing on damages.

The decision in *Ford* was largely based upon this Court's holding in *Carey* v. *Piphus*, 435 U.S. 247, 266 (1978) that "the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions . . . ." See *Ford*, 531 A.2d at 240.

The District of Columbia Court of Appeals also based its holding upon this Court's long-held view that

> "(a)n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Memphis Light, Gas & Water Division* v. *Waters*, 436 U.S. 1, 13 (1978) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

In mandating the forfeiture of firearms after *dismissal* of criminal proceedings, N.J.S. 2C:64-2 requires that firearms be forfeited without *any* notice—much less notice apprising the person from whom the firearms were seized of the legal authority pursuant to which the property is being retained and, more important, of the fact that the person "could take particular steps to

challenge" (*Ford*, 531 A.2d at 238) the State's action. In its opinion in the instant case, the New Jersey Supreme Court nonetheless held that "the proceedings in this case furnished sufficient procedural due process to the property owner . . . ." 127 N.J. at 90, 602 A.2d at 731. Yet plainly, "the proceedings in this case" (127 N.J. at 90, 602 A.2d at 731) did not notify Mr. Sholtis that he "could take particular steps to challenge" (*Ford*, 531 A.2d at 238) the State action. Indeed, the proceedings in this case made clear to Mr. Sholtis that he did not have an opportunity to challenge the State's action. As interpreted by the New Jersey Supreme Court, N.J.S. 2C:64-2 thus, at least in part, plainly contravenes the Due Process Clause of the Fourteenth Amendment as interpreted by the District of Columbia Court of Appeals and by this Court.[6]

3) In addition to not requiring constitutionally adequate notice, N.J.S. 2C:64-2 also fails to provide for an evidentiary hearing for firearms forfeitures after the dismissal of criminal proceedings. In the instant case, even though the question of the disposition of the firearms was discussed in the September 13, 1988 hearing in the trial court, that hearing focused on Mr. Sholtis' admission to the PTI program. As to the disposition of the firearms, the hearing dealt only with that question to the extent of the applicability of comity; the trial court prevented Mr. Sholtis from raising any other defenses to the forfeiture since it agreed with the State that N.J.S. 2C:64-2 mandated the forfeiture of the firearms upon dismissal of the criminal proceedings. App. at 3a, 10a. More-

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[6] The provision of N.J.S. 2C:64-2 which mandates forfeiture of firearms after entry of a judgment of conviction just as plainly does not violate due process since the criminal charge constitutes the required notice. See also N.J.S. 2C:64-3a, which, in the case of "non-*prima facie*" contraband, authorizes a civil action by the state, brought within 90 days, "against the property sought to be forfeited." In bringing such a civil action, all the pleading and service-of-process rules would apply; as a result, forfeiture pursuant to N.J.S. 2C:64-3a complies with the Due Process Clause.

over, as the New Jersey Supreme Court has ordered the trial court to forfeit the firearms (127 N.J. at 91, 602 A.2d at 731), notice and an opportunity for a hearing clearly remain foreclosed. Thus, the State did not afford Mr. Sholtis "an opportunity to present [his] objections." *Memphis Light, Gas & Water Division, supra* at 13.

As this Court has made clear, "some form of hearing is required before an individual is finally deprived of a property interest." *Mathews* v. *Eldridge*, 424 U.S. 319, 333 (1976).[7] Thus, since N.J.S. 2C:64-2, on its face and as applied to Mr. Sholtis, mandates forfeiture of Mr. Sholtis' firearms, and hence deprives him of his property with finality, N.J.S. 2C:64-2 denies Mr. Sholtis his right to procedural due process in not providing an evidentiary hearing on some form in which Mr. Sholtis could raise defenses to the forfeiture.

As noted in the Statement of the Case, *supra*, there exists a material factual dispute regarding the search which resulted in the seizure of Mr. Sholtis' firearms. Depending upon how that factual dispute would be resolved, the seizure of Mr. Sholtis' firearms could have been unlawful for one of two reasons: either it was the fruit of a compelled self-incriminating statement or the result of an unreasonable search. As a consequence, the firearms may not be admissible evidence. See *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693 (1965) (property seized pursuant to unreasonable, warrantless search not admissible evidence in forfeiture proceeding). See also *Florida* v. *Royer*, 460 U.S. 491 (1983) and *State* v. *Lund*, 119 N.J. 35 (1990). Without a hearing, however, none of these significant issues will ever be resolved.

4) It is no answer to the requirements of the Due Process Clause to argue, as the District of Columbia Court of Appeals clearly recognized in its analysis of the Dis-

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[7] As noted, *supra*, the procedures set forth in N.J.C. 2C:64-3, relating to so-called "non-*prima facie*" contraband, would certainly met the requirements of procedural due process.

trict of Columbia law in *Ford*, that forfeiture of firearms under certain circumstances—i.e., when the state designates them a "prima facie" contraband—occupies an unique position in forfeiture law; the clear language of the Due Process Clause allows of no exceptions. Indeed, such an assertion merely begs the question since the very issues in a forfeiture action would be 1) whether an item of property is in fact a "firearm" within the meaning of the applicable law [8] and 2) whether the firearm was unlawfully possessed, carried, or used. Moreover, as noted, *supra*, also at issue in a forfeiture action in this case would be whether the search of Mr. Sholtis' van was lawful. Without adequate notice and an opportunity for a hearing, the State's assertions remain merely unproven assertions and Mr. Sholtis' defenses remain merely theoretical.

5) In the words of the New Jersey Supreme Court, New Jersey is "one of the most heavily traveled corridor states in the nation . . . ." 127 N.J. at 89, 602 A.2d at 730. App. at 5a. Citizens of the New England states, as well as many of the states of the Atlantic Coast south of New Jersey, are thus likely to travel through New Jersey. And most of those states have not "constructed a 'grid' of regulations" (127 N.J. at 88, 602 A.2d at 730, App. at 4a) of firearms similar in scope and severity to those of New Jersey.[9] It thus follows that many citizens run the risk of being subjected to the application of N.J.S. 2C:64-2, as now interpreted by the New Jersey Supreme Court, and thus of losing valuable property which they lawfully possess, carry, and use in their states

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[8] This element would not be an issue in the instant case.

[9] With the exception of Massachusetts (Chap. 140, Laws of Mass.) and New York (Art. 265, N.Y. Consol. Laws (McKinney's)), none of the New England states or the Atlantic Coast States south of New Jersey have a requirement to have a permit to possess a firearm similar to N.J.S. 2C:39-5b. See, e.g., Ch. 790, Fl. Stat.; § 16-11-126 *et seq.*, Ga. Code; § 16-23-10 *et seq.*, Code of Laws of S.C.; § 14-402 *et seq.*, Gen. Stat. of N.C.; § 18-2.279 *et seq.*, Code of Va.; Art. 27, § 36 *et seq.* and § 441 *et seq.*; Code of Md; Title 11, § 1441

of residence.[10] It further follows that this case presents an issue of broad significance.

CONCLUSION

Because N.J.S. 2C:64-2, as interpreted by the New Jersey Supreme Court, plainly conflicts with the Due Process Clause as interpreted by the Court of Appeals of the District of Columbia and by this Court, this Court should grant this petition and resolve that conflict.

Respectfully submitted,

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May, 1992

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et seq., DE Code; Title 29, Ct. Gen. Stats.; Title 13, Ch. 85, Vt. Stat.; Ch. 159, NH Rev. Stat.; and Title 25, Ch. 252 ME Rev. Stat.

[10] Notably, like New Jersey, the District of Columbia is part of the "heavily traveled" Atlantic Coast corridor. Indeed, as the nation's capital, it attracts citizens from all states of the Union. Notwithstanding this fact, the District of Columbia Court of Appeals had no trouble applying the right to procedural due process in firearms forfeiture cases.

APPENDICES

APPENDIX A

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF TWO SEIZED FIREARMS

Argued Nov. 19, 1991

Decided March 4, 1992

Susan W. Sciacca, Asst. Prosecutor, for appellant State of N.J. (John J. Fahy, Bergen County Prosecutor, atty.).

Nancy E. Lucianna, Hackensack, for respondent Mark J. Sholtis (Lucianna & Lucianna, attys.; Athan M. Mergus, on the briefs).

Gary J. Needleman, Montville, submitted a brief on behalf of amici curiae Riverdale Police Pistol Team, Inc. and the Nat. Rifle Ass'n of America (Barbarula and Needleman, attys.).

The opinion of the Court was delivered by

O'HERN, J.

The question in this appeal is whether a non-resident gun owner may avoid the sanctions of New Jersey's gun-control laws on the basis that possession of the weapon was legal in the owner's state of residence and that the owner was merely transporting weapons through New Jersey without criminal intent and knowledge that New Jersey would regard the possession as illegal. In that context, we must inquire whether New Jersey must permit a motorist from Florida to carry, on the New Jersey Turnpike, a loaded handgun in a glove compartment because Florida would permit such possession on its highways. We find that no principle of constitutional doctrine

or of federal supremacy over the interstate transportation of weapons compels that result. New Jersey need not observe the lowest common denominator of gun control among the various states. It is illegal in New Jersey to transport a loaded handgun in this way without a license to carry. Firearms that are unlawfully possessed or carried in New Jersey are *prima facie* contraband under *N.J.S.A.* 2C:64-1 and are subject to forfeiture.

The parties have agreed on the facts. On August 9, 1988, State Police officers making a routine speeding stop of a Florida van on the New Jersey Turnpike spotted an eighteen-inch machete lying in open view between the driver and passenger seats. The troopers arrested the driver, Mark Sholtis (hereinafter referred to as defendant), and his passenger for possession of that dangerous weapon. Incident to the arrest, one of the troopers searched the interior of the stopped van. Inside the glove compartment he found a loaded .38 caliber Smith & Wesson handgun. Underneath and behind the driver's seat he discovered a loaded .357 magnum Smith & Wesson revolver, a speed loader containing five .38 caliber hollow-point cartridges, five .38 caliber blue-tipped cartridges, and a container of marijuana. The State Police subsequently charged defendant with illegal possession of the handguns, contrary to *N.J.S.A.* 2C:39-5b; of the hollow-point bullets, contrary to *N.J.S.A.* 2C:39-3f; and of the machete, contrary to *N.J.S.A.* 2C:39-3e. The passenger in defendant's van gave a written statement acknowledging ownership of the marijuana.

The Bergen County Prosecutor consented to defendant's admission into the Pre-Trial Intervention Program (PTI), see *Rule* 3:28, conditioned on his signing a weapons-release form. At the PTI hearing, defendant argued that that condition was unfair because his home state of Florida would allow him to carry loaded guns in his car. (The Bergen County Prosecutor's Office questioned whether, even under Florida law, defendant had legally transported

the loaded handguns, citing the requirements of *Fla.Stat.* 790.25(3)(1) and (5) that the firearm be "securely encased" or not otherwise "readily accessible for immediate use.") The Law Division admitted defendant into PTI but reserved decision on return of the two firearms. On defendant's successful completion of the PTI program, the Law Division dismissed all charges against him.

Thereafter, the Law Division ordered the State to return the two guns to Sholtis. The Law Division recognized that unlawfully possessed firearms are considered *prima facie* contraband under New Jersey's forfeiture statute, *N.J.S.A.* 2C:64-1 to -9. It concluded, however, that the statute does not apply in this case because of the property rights implicated and because principles of comity compelled deference to Florida law. The court thus ordered the return of the weapons to Sholtis under the auspices of Florida law-enforcement authorities to prevent illegal possession by Sholtis in New Jersey. The State appealed, and the Appellate Division affirmed *per curiam*. We granted the State's petition for certification, 126 *N.J.* 329, 598 *A.*2d 888 (1991), and now reverse.

But for consideration of whether New Jersey's gun control laws and forfeiture provisions are preempted by federal statute providing for the interstate transportation of firearms, 18 *U.S.C.A.* § 926A, all the issues presented in this case have been foreclosed by earlier decisions of this Court and the United States Supreme Court. In *State v. Hatch*, 64 *N.J.* 179, 313 *A.*2d 797 (1973), this Court disapproved of a trial court ruling that in the absence of notice or knowledge, a nonresident passing through New Jersey may possess a handgun or other firearm so long as that possession is not violative of the law of his or her own state. *Id.* at 188-89, 313 *A.*2d 797. The *Hatch* Court concluded that to carry handguns in one's car or on one's person along the highways is, apart from certain exemptions, "clearly forbidden unless the person carrying the handgun has a permit issued in accord-

ance with *N.J.S.A.* 2A:151-41, -44 (predecessor to *N.J.S.A.* 2C:58-4)." *Id.* at 186, 313 *A.*2d 797. The Court noted that "[w]hen dealing with the carrying of handguns we find nothing in the statute which suggests any flexibility or any intent to exclude nonresidents within or passing through New Jersey from the strict permit requirement." *Ibid.* Like Hatch, "when [Sholtis] came into New Jersey * * * he subjected himself to New Jersey's gun control regulations." *Id.* at 188, 313 *A.*2d 797.

New Jersey has carefully constructed a "grid" of regulations for handguns that differentiates between permission to possess a handgun and permission to carry a handgun. *State v. Ingram*, 98 *N.J.* 489, 495 n. 1, 488 *A.*2d 545 (1985). Few persons in this state are exempt from the criminal provisions for carrying a gun without a permit. *See N.J.S.A.* 2C:39-6. That the non-resident gun owner had no knowledge of the specifics of New Jersey's gun-control laws is of no moment. Gun-control laws are preeminently regulatory. *United States v. Freed*, 401 *U.S.* 601, 91 *S.Ct.* 1112, 28 *L.Ed.*2d 356 (1971). "[W]here dangerous or deleterious devices or products are involved, the probability of regulation is so great that anyone who is aware that he is either in possession of or dealing with them must be presumed to be aware of the regulation." *McIntosh v. Washington*, 395 *A.*2d 744, 756 (D.C.1978) (citing *United States v. International Minerals & Chem. Corp.*, 402 *U.S.* 558, 564, 91 *S.Ct.* 1697, 1701-02, 29 *L.Ed.*2d 178, 183 (1971). In the context of gun-control laws courts have held that ignorance of the law is no defense to even a statute requiring that the defendant have "knowingly" violated the law. *United States v. Sherbondy*, 865 *F.*2d 996, 1002 (9th Cir.1988).

The absence of a criminal conviction does not preclude forfeiture of the weapons. *See N.J.S.A.* 2C:64-4(b) ("The fact that a prosecution involving seized property terminates without a conviction does not preclude forfeiture proceedings against the property"); *United States*

v. One Assortment of 89 Firearms, 465 *U.S.* 354, 104 *S.Ct.* 1099, 79 *L.Ed.*2d 361 (1984) (criminal acquittal on dealing in firearms without a license did not bar subsequent civil forfeiture proceeding against weapons themselves under federal law). (In certain circumstances, however, 18 *U.S.C.A.* § 924(d)(1) now requires a criminal conviction as a condition to federal forfeiture of illegally-possessed firearms.)

Unlicensed firearms are subject to mandatory forfeiture in New Jersey, because as with illegally imported narcotics, *United States v. Jeffers*, 342 *U.S.* 48, 72 *S.Ct.* 93, 96 *L.Ed.* 59 (1951), and unregistered stills, alcohol, and mash, *Trupiano v. United States*, 334 *U.S.* 699, 68 *S.Ct.* 1229, 92 *L.Ed.* 1663 (1948), there is an express public policy against possession of such objects. *See One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699, 85 *S.Ct.* 1246, 1250, 14 *L.Ed.*2d 170, 174 (1965) (distinguishing the imported narcotics and unregistered still, alcohol, and mash from an unlawfully-used automobile, the latter being only derivative contraband because but for its use it would be a thoroughly legal instrumentality).

As one of the most heavily traveled corridor states in the nation, New Jersey has a particularly compelling interest in regulating the carriage of weapons within its borders. New Jersey's forfeiture provisions further the purposes of gun-control legislation by "[k]eeping potentially dangerous weapons out of the hands of unlicensed [users]." *United States v. One Assortment of 89 Firearms, supra*, 465 *U.S.* at 364, 104 *S.Ct.* at 1106, 79 *L.Ed.*2d at 369; *see also Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 *U.S.* 663, 687 n. 26, 94 *S.Ct.* 2080, 2094 n. 4, 40 *L.Ed.*2d 452, 470 (1974) ("Seizure and forfeiture statutes also help compensate the Government for its law enforcement efforts and provide methods for obtaining security for subsequently imposed penalties and fines.").

New Jersey denotes "firearms which are unlawfully possessed, carried, acquired or used" as "*prima facie* contraband," *N.J.S.A.* 2C:64-1a(1), but treats them as "per se" contraband. Such weapons are "subject to forfeiture and no property right shall exist in them." *Ibid.* The civil procedures applicable to derivative contraband, *State v. One 1986 Subaru*, 120 *N.J.* 310, 576 *A.*2d 859 (1990), do not apply to *prima facie* contraband. *N.J.S.A.* 2C:64-2 provides that

> *prima facie* contraband shall be retained by the State until entry of judgment or dismissal of the criminal proceeding, if any, arising out of the seizure. Thereafter, *prima facie* contraband shall be forfeited to the entity funding the prosecuting agency involved, subject to the rights of owners and others holding interests pursuant to section 2C:64-5.

The qualification in *N.J.S.A.* 2C:64-5 concerning the innocent involvement of property in unlawful activity does not apply to the illegal possession of weapons. All that is required is that the forfeiture proceedings meet constitutional requirements. *See N.J.S.A.* 2C:64-1b ("Seizure [of *prima facie* contraband] without such process (criminal or civil] may be made when not inconsistent with the Constitution of this State or the United States."). We are satisfied that the proceedings in this case furnished sufficient procedural due process to the property owner to assert any claim that the possession of the weapons was not illegal in New Jersey or any other cognizable claim to the property.

Thus, only the interdiction of 18 *U.S.C.A.* § 926A could prevent application of the State's forfeiture provision to defendant. That statute serves, however, as a two-edged sword in this case. Although enacted to assure to gun owners freedom to travel from state to state with weapons legally possessed in the state of residence, the statute qualifies that freedom with the sensible accommodation of each state's right to ensure the safety, health,

and welfare of its own citizens. To obtain the umbrella of federal protection set forth in 18 *U.S.C.A.* § 926A, the gun owner must be legally qualified to possess and carry the firearm, and must transport it unloaded, and neither the firearm nor any ammunition can be "readily accessible" or "directly accessible" from the passenger compartment of the vehicle. The statute provides further that "in the case of a vehicle without a compartment separate from the driver's compartment [as is the case here] the firearm or ammunition shall be contained in a locked container other than the glove compartment or console." 18 *U.S.C.A.* § 926A. *See also* David T. Hardy, *The Firearms Owners' Protection Act: A Historical and Legal Perspective*, 17 *Cumb.L.Rev.* 585, 676-80 (1987) (discussion of historic and legal perspectives of the Act).

None of the conditions of the federal statute has been met here as both revolvers were "readily accessible" and loaded at the time that the State Police stopped defendant's van. Consequently, Sholtis had no federally-protected right under 18 *U.S.C.A.* § 926A to transport his loaded revolvers in the glove compartment and in the cab of the van. We are satisfied that the provisions of 18 *U.S.C.A.* § 926A sufficiently address the concerns for comity expressed by the courts below. No other principles of substantive due process or procedural fairness contravene the express language of *N.J.S.A.* 2C:64-1(a).

The judgment of the Appellate Division is reversed. The cause is remanded to the Law Division for forfeiture of the contraband weapons to the entity funding the prosecuting agency involved.

For reversal and remandment—Chief Justice WILENTZ and Justices CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI and STEIN—7.

Opposed—None.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

Complaint No. W-969 749, W-969 750

STATE OF NEW JERSEY

-vs-

MARK SHOLTIS

Defendant.

Date: September 13, 1988 PTI

Place: Bergen County Courthouse
Hackensack, New Jersey

BEFORE: THE HONORABLE ANDREW P. NAPOLITANO, J.S.C.

TRANSCRIPT OF
PRETRIAL
INTERVENTION
HEARING

APPEARANCES:

ROBERT WILSON, Assistant Prosecutor for the State of New Jersey

NANCY LUCIANNA, ESQ. Lucianna & Lucianna, Attorneys for the defendant Mark Sholtis

* * * *

[3] MS. LUCIANNA: There is no doubt about it, he is an outstanding citizen of Tallahassee, Florida. I ask you to look at these.

THE COURT: I'll hear you, Mr. Wilson, but you might want to take a minute, not now, because we have these other matters, but sometime this morning before we conclude the PTI that you look at these before you leave.

MR. WILSON: Your Honor, I just want to reinforce, and I'm sure you're well aware of the law on civil forfeitures and the criminal procedure that unlawful possession of a weapon in the State of New Jersey is contraband, per se, regardless of the fact that he may, in fact, have a firearm's permit in another state.

We're talking about the State of New Jersey and a violation of the state law of New Jersey, and in the event that this defendant breaks our law or wishes to get into the program, it's certainly reasonable, since the law itself under forfeiture says this is contraband, per se, to ask for a [4] weapons release, is really only a technicality, and to condition his entry into forfeiture of weapons, which are contraband, per se, does not seem to be an unreasonable request by the State and certainly should be a condition.

* * * *

[5] THE COURT: What are we talking about, Mr. Wilson? How many guns and what are they?

MR. WILSON: There was a .357 caliber revolver and also a .38 caliber Smith and Wesson revolver, both in his vehicle that he was driving through the State.

MS. LUCIANNA: Might add in his trunk.

THE COURT: I'm familiar with the facts here that he was asked by the police a question if he had weapons and he told them quite candidly that he did.

I'm also familiar with his background, you know, [6] pleasant, though much of the letters you were kind enough to have me sent—

MR. WILSON: Well, your Honor—

THE COURT: —to have sent to me.

Go ahead, Mr. Wilson.

MR. WILSON: As I say, the statute on forfeiture are clear on this issue that these things should be forfeited as a matter of law.

We would certainly be willing to supply the court with briefs and statements of the law, but we're really, in effect, saying if this defendant is willing to go on PIT, as we would if he was found guilty of this crime, that the law be followed, that the legislature in its wisdom has passed this law to deem these things contraband if seized, and that we follow the laws of the State of New Jersey and seize those and forfeit them.

THE COURT: Okay. I'm going to admit him in the program.

I'm going to ask you to send me a letter memorandum, not more than a page, Mr. Wilson, and, Miss Lucianna, you can respond to it, and I'll determine whether the condition for forfeiture will apply after I read your memorandum.

I think Mr. Wilson is essentially correct on the law, but there is comity problems here, comity as to whether the State of New Jersey should be seizing property which is lawful in the state of which the defendant is a resident and citizen.

[7] I think, perhaps, in a letter memorandum and I'll determine wether or not the condition should apply, okay.

MS. LUCIANNA: Thank you, your Honor.

THE COURT: Now, Mr. Sholtis, you are admitted to the program.

You'll find out from Miss Lucianna whether you get your guns back in a couple of weeks.

Mr. Wilson, maybe a week or two for your letter memrandum.

* * * *

(Whereupon the hearing concluded)

I certify that the foregoing transcript of proceedings is a true and accurate record of the proceedings.

/s/ Peter J. Rizza
PETER J. RIZZA,
C.S.R.
Lic. XI0744

Date: 10-4-90